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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 434

AERONAUTICAL RADIO, INC., *Petitioner*

v.

NATIONAL MEDIATION BOARD, et al., and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN OPPOSITION

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ARGUMENT

The petitioner, Aeronautical Radio, Inc., (hereinafter referred to as ARINC) contends that the court below erred in upholding the decision of the District Court that it had no jurisdiction, on the showing made before it, to review a certification by the National Mediation Board of respondent International Brotherhood of Teamsters (hereinafter referred to as Teamsters) as the authorized representative of a craft or class of certain technicians and maintenance men employed by petitioner. ARINC asserts that the Board failed to fulfill its statutory duty to investigate a representation dispute when, after holding an election among the contending unions, it certified the Teamsters although the Teamsters had received a vote of less than a

majority of all in the craft or class, but more than a majority of those desiring to select a representative for bargaining purposes.

1. To begin with, it is recognized by all parties that jurisdiction of the courts to review representation investigations and certifications of the National Mediation Board is extremely limited. *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297 (1943); *Railway Clerks* v. *Employees Association*, 380 U.S. 650 (1965). Here, admittedly, and as found by the courts below, the Board had investigated the application for certification filed by the Teamsters "to the extent of holding an election, ascertaining the results, and designating a bargaining representative." *Aeronautical Radio, Inc.* v. *NMB*, U.S. Court of Appeals for the District of Columbia Circuit, Consolidated Appeal Cases No. 20, 128 and No. 20, 251, June 2, 1967, . . . F2d . . ., 2 Lab. Rel. Rep. (65 LRRM 2522) Appendix to Petition, p. 4a. ". . . . . [T]he Board's duty to investigate is a duty to make such investigation as the nature of the case requires." *Railway Clerks* v. *Employees Association*, 380 U.S. at 662. In that case the court, after finding that the Board had performed its statutory duty to investigate the representation dispute, stated (380 U.S. at 668):

> "Its determination, therefore, is not subject to judicial review. *Switchmen's Union* v. *National Mediation Board, supra.* As was pointed out there, the 'highly selective manner in which Congress has provided for judicial review of administrative orders or determinations under the Act', id., at 305, indicates the confidence that it reposed in the Board. In turn the fair and equitable manner in which the Board has discharged its difficult function is attested by the admirable results it has obtained."

It was made abundantly clear that the "details of selecting representatives" is "to be left for the final determination of the Board." 380 U.S. at 668-669.

2. Even if the courts below had jurisdiction to review the certification, it must be concluded that said certification was valid and had been properly issued. On the merits, the

issue regarding the validity of the certification stems from a difference of interpretation of the following language of Section 2, Fourth of the Railway Labor Act (45 U.S.C., Sec. 152, Fourth): "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft." There are at least two reasonable interpretations that may be applied:

(1) The Statute dictates that no single union can be certified *unless it receives the vote of an absolute majority of all eligible employees in the class or craft.* This is ARINC's interpretation. On the facts of this case, there were 400 eligible employees of whom 147 voted for the IBT, 74 voted for ALDA (another labor organization), 25 cast void ballots, and the remainder did not vote. ARINC would contend that since the IBT did not receive 201 votes, it could not be certified.

(2) The Statute dictates solely that the majority of the employees in the craft or class shall make the determination as to who shall represent the craft or class. Stated otherwise, the Statute merely defines *the decision-making body.* It remains silent as to how the determination shall be made. This is the interpretation that has been adopted and applied by the NMB from the enactment of the Railway Labor Act to the present time. Applying it to the instant case, the NMB determined that 221 employees (a clear majority of the craft or class) had cast valid ballots and that, therefore, the election was valid.[1] That determination exhausted the statutory requirement. The Board further determined that a majority (147) of the decision-making body (221) had chosen the IBT. Accordingly, the IBT was certified.[2]

The foregoing application of the statute by the NMB has received the consistent approval of the Supreme Court.

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[1] Had a majority of the eligible employees failed to cast valid ballots, no union would have been certified.

[2] This procedure is explained on the ballot and was carefully and repeatedly explained to the employees by ARINC prior to the vote. See (J. A. 15, 43-52).

In Virginia Ry. v. System Federation, 300 U. S. 515, 559-560 (1937), the Board's certification of the Federation as the representative of a certain craft or class was attacked "because less than a majority of that craft, although a majority of those voting, voted for the Federation." 300 U. S. at 560. The Supreme Court rejected the attack and approved the procedure:

> "Section 2, Fourth of the Railway Labor Act provides: 'The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of the Act'. Petitioner construes this section as requiring that a representative be selected by the votes of a majority of eligible voters. *It is to be noted that the words of the section confer the right of determination upon a majority of those eligible to vote, but is silent as to the manner in which that right shall be exercised.* Election laws providing for approval of a proposal by a specified majority have been generally construed as requiring only the consent of the specified majority of those participating in the election" [citations]. 300 U. S. at 560 (emphasis added).

The NMB's interpretation, practice and procedure were reaffirmed in Railway Clerks v. Employees' Ass'n., 380 U.S. 650 (1965). In that case, United Airlines made substantially the same arguments that ARINC reargues here (Brief for Petitioner, United Air Lines, Inc., No. 139, October Term, 1964, pp. 51-54). The Supreme Court stated (380 U.S. at 668-670):

> Using the Board's ballot, an employee may refrain from joining a union and refuse to bargain collectively. All he need do is not vote and this is considered a vote against representation *under the Board's practice of requiring that a majority of the eligible voters in a craft or class actually vote for some representative before the election is valid.*
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> * * * * * * * *
>
> *Thus, under the Board's practice, a majority of the craft or class, as required by Sec. 2, Fourth, does have the right to determine who shall be the representative*

of the group, or, indeed, whether they shall have any representation at all. (Emphasis supplied.)

Therefore, to argue here, as does ARINC, that the 179 [3] who did not vote must be pitted against the 147 who voted for the IBT plainly contradicts the holding in Railway Clerks. For under the Board's practice, as approved by the Supreme Court, the 179 who failed to vote were not part of the decision-making "majority of [the] craft or class" who would determine "who shall be the representative of the craft" (Section 2, Fourth). And, if the Board's decision "is not acceptable, the place to go is to Congress," not to the courts. Railway Clerks, *supra,* 380 U. S. at 671.

The court below followed this reasoning when it found that because a majority of the craft had voted for union representation and the majority of those so voting had selected the Teamsters, the Teamsters certification was a proper one under the Railway Labor Act.

This Court, in *Switchmen's Union, supra,* (320 U. S. at 305,) after examining the legislative history of the Railway Labor Act, stated: ". . . [T]he intent seems plain — the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law."

To prevent unprecedented avenues for review of Board certifications from being opened, contrary to the rule that Board certifications are not subject to judicial review, the petition herein should be dismissed.

Respectfully submitted,

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[3] The 25 who cast void ballots are deemed to have cast no vote at all.